

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 4:00-cr-20-CDL-MSH
	:	
SAUNDRA ANN FERRELL,	:	
	:	
Defendant.	:	

REPORT AND RECOMMENDATION

Pending before the Court is Defendant Sandra Ann Ferrell’s motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) (ECF No. 56). For the following reasons, it is recommended that the motion be denied.

BACKGROUND

On January 31, 2001, Ferrell was found guilty by a jury of first degree murder (ECF No. 32). Following her conviction, she was sentenced to life imprisonment (ECF No. 35). Ferrell has been trying to get out of prison ever since. She filed a direct appeal, but the Eleventh Circuit affirmed her conviction on September 20, 2001 (ECF Nos. 36, 46). She filed a motion for new trial but the Court denied that on March 7, 2002 (ECF Nos. 49, 52). The Eleventh Circuit affirmed the denial on April 14, 2003 (ECF No. 57). She filed a motion to vacate, which the Court denied on July 29, 2004 (ECF Nos. 60, 64). The Court of Appeals denied Ferrell’s request for a Certificate of Appeal (“COA”) of that judgment and dismissed her appeal on December 27, 2004 (ECF No. 77). On February 12, 2007, Ferrell filed another motion for a COA, which the Court denied (ECF Nos. 92, 93). The

Eleventh Circuit dismissed her appeal of that order on April 2, 2007 (ECF No. 96). Her second motion for a COA was denied on July 24, 2007. On January 18, 2008, Ferrell filed a motion for permission to file a motion under Rule 60(b), which was denied (ECF Nos. 99, 105). On December 12, 2011, Ferrell moved for a sentence reduction, and the Court denied that motion on January 24, 2012 (ECF Nos. 110, 117). On April 1, 2013, she filed a motion for reconsideration, motion for a writ of error coram nobis, and motion for leave to file *in forma pauperis*, all of which the Court denied on October 16, 2013 (ECF Nos. 122, 129). Ferrell moved this Court for permission to file a successive motion to vacate on October 10, 2013, and the Court denied the motion on November 25, 2013 (ECF Nos. 128, 136).

Ferrell's efforts were not limited to this district or circuit. On November 5, 2008, she filed an application for habeas relief under 28 U.S.C. § 2241 in the United States District Court for the Northern District of West Virginia. *Ferrell v. Cross*, No. 3:08-CV-158, 2009 WL 54474, at *1 (N.D. W. Va. Jan. 8, 2009). That petition was dismissed. *Id.* She filed another § 2241 petition in the United States District Court for the District of Minnesota, which was also dismissed. *Ferrell v. Rios*, No. 09-234 MJD/RLE, 2009 WL 701952, at *1 (D. Minn. Mar. 13, 2009). On July 1, 2016, she filed her third § 2241 petition in the United States District Court for the Eastern District of Missouri. *Ferrell v. Paul*, No. 0:16-cv-2403-MJD-KMM, 2016 WL 5956098, at *2 (D. Minn. Aug. 16, 2016), *recommendation adopted by* 2016 WL 6022915 (D. Minn. Oct. 13, 2016). That court transferred the case to the Minnesota district court, which again dismissed her petition. *Id.* The Eighth Circuit affirmed the district court on April 27, 2017. *Ferrell v. Paul*, No. 16-

4556 (8th Cir. Apr. 27, 2017).

This Court received Ferrell’s *pro se* motion for compassionate release on October 19, 2022, and an addendum to the motion on October 24, 2022 (ECF Nos. 164, 165). The Government responded to the motion on December 21, 2022 (ECF No. 170). Ferrell’s motion is ripe for review.

DISCUSSION

A district court “‘may not modify a term of imprisonment once it has been imposed except’ under certain circumstances.” *United States v. Harris*, 989 F.3d 908, 909 (11th Cir. 2021) (quoting 18 U.S.C. § 3582(c)). One circumstance is the compassionate release exception provided in 18 U.S.C. § 3582(c)(1)(A). *Id.* at 909-10. Under that section, a prisoner may obtain compassionate release if, “after considering the factors set forth in [18 U.S.C. § 3553(a)],” the district court finds that “extraordinary and compelling reasons warrant such reduction . . . and that such reduction is consistent with applicable policy statements issued by the Sentencing Commission.”¹ 18 U.S.C. § 3582(c)(1)(A)(i). The Sentencing Commission’s policy statement for compassionate release is found at U.S.S.G. § 1B1.13. Under the policy statement, a defendant must show that he or she “is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” U.S.S.G. § 1B1.13(2). Further, a defendant must show that “extraordinary and compelling reasons warrant the reduction.” U.S.S.G. § 1B1.13(1)(A). A defendant bears

¹ In addition to extraordinary and compelling reasons warranting a reduction, compassionate release may also be granted to a defendant who is over 70 years old and has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c). 18 U.S.C. § 3582(c)(1)(A)(ii). This provision is inapplicable to Defendant.

the burden of proving entitlement to compassionate release. *See United States v. Mantack*, 833 F. App'x 819, 819-20 (11th Cir. 2021) (per curiam) (citing *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014)).

To establish “extraordinary and compelling reasons” under the policy statement, a defendant must meet one of four circumstances. U.S.S.G. § 1B1.13 cmt. n.1. The first is a qualifying medical condition. U.S.S.G. § 1B1.13 cmt. n.1(A). A medical condition qualifies if “[t]he defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory).” U.S.S.G. § 1B1.13 cmt. n.1(A)(i). A defendant need not show a “probability of death within a specific time period,” and “[e]xamples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.” *Id.* In the alternative, a defendant’s medical condition qualifies if he or she is:

(I) suffering from a serious physical or medical condition, (II) suffering from a serious functional or cognitive impairment, or (III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

U.S.S.G. § 1B1.13 cmt. n.1(A)(ii).

The second circumstance is the age of the defendant. U.S.S.G. § 1B1.13 cmt. n.1(B). To satisfy this circumstance, the defendant must be 1) “at least 65 years old,” 2) be “experiencing a serious deterioration in physical or mental health because of the aging process,” and 3) have “served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.” *Id.*

The third circumstance is family circumstances, which requires “[t]he death or incapacitation of the defendant’s minor child or children” or “[t]he incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.” U.S.S.G. § 1B1.13 cmt. n.1(C).

The fourth circumstance is “other reasons,” which is where “[a]s determined by the Director of the Bureau of Prisons [“BOP”], there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).” U.S.S.G. § 1B1.13 cmt. n.1(D). “[O]ther reasons’ are limited to those determined by the [BOP], not by courts.” *United States v. Lee*, 857 F. App’x 556, 558 (11th Cir. 2021) (per curiam) (citing *United States v. Bryant*, 996 F.3d 1243, 1246-49 (11th Cir. 2021)). Therefore, a district court lacks the authority to determine if a defendant’s circumstances qualify as an “other reason” under U.S.S.G. § 1B1.13 cmt. n.1(D). *Bryant*, 996 F.3d at 1247-48, 1263.

In the form portion of her motion for compassionate release, Ferrell checks two boxes indicating she seeks compassionate release under the first and fourth circumstances.² Mot. for Compassionate Release 4, ECF No. 164. The first circumstance is a qualifying medical condition, and Ferrell cites her diagnosis of hypertension—which she contends is uncontrolled—a heart murmur, nerve damage to her left wrist, impingement syndrome of the shoulder, sleep pattern disturbance, left arm pain, and the risks posed by Covid-19 in light of her underlying medical conditions. *Id.* at 12-14. Ferrell’s medical records,

² Ferrell is 54 years old and does not cite any applicable family circumstances, so she would not qualify under the second and third circumstances.

however, do not show that these conditions are terminal or substantially diminish her ability to provide self-care in the prison. Instead, they show she is being appropriately treated for her medical conditions and is able to take her prescribed medication, though at times she has chosen not to. *See* Gov’t Ex. 1, at 20, 110, ECF No. 172. Further, the records show she has received both rounds of the Pfizer-BioNTech Covid-19 vaccination and three booster shots and has consistently tested negative for the virus. *Id.* at 76, 84-85, 162, 176-77. “Moreover, in this circuit, the mere increased likelihood of harm from COVID-19 does not qualify as an extraordinary and compelling reason.” *United States v. Bryant*, No. 5:91-cr-11-MTT, 2023 WL 2868932, at *2 (M.D. Ga. Apr. 10, 2023) (citing *United States v. Giron*, 15 F.4th 1343, 1346 (11th Cir. 2021)).

Regarding the “other circumstances,” Ferrell does not specify what she believes qualifies as another extraordinary and compelling reason for release. Her motion is twenty-one pages and includes criticisms of the prosecutor, discussion of changes in the sentencing guidelines, citations to other cases where convicted murderers were granted compassionate release, and declarations of her rehabilitation. None of these, though, qualify as an extraordinary and compelling reason under the “other reasons” provision of U.S.S.G. § 1B1.13 cmt. n.1(D) because only the BOP—not the Court—can make such determination, which it has not done here. *Bryant*, 996 F.3d at 1247-48, 1263.

Even assuming there are extraordinary and compelling reasons—which there are not—compassionate release is inappropriate after considering the factors set forth in 18

U.S.C. § 3553(a).³ These factors include:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence imposed to afford adequate deterrence; (4) the need to protect the public; (5) the need to provide the defendant with educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) the pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwanted sentencing disparities; and (10) the need to provide restitution to victims.

United States v. Macli, 842 F. App'x 549, 552 n.1 (11th Cir. 2021) (per curiam) (citing 18 U.S.C. § 3553(a)).

The first three factors listed above—codified at 18 U.S.C. § 3553(a)(1), (2)(A), and (2)(B)—weigh decisively against Ferrell. The facts of this case are especially heinous. According to the evidence, Ferrell's victim was bound at the wrists and ankles and dumped alive into the Chattahoochee River to drown. Gov't Ex. 2, at 3, ECF No. 172-1. The victim was chosen at random and killed in cold blood. *Id.* Further, prior to committing this crime, Ferrell had been convicted of assault with intent to murder along with threats and burning of a dwelling. *Id.* at 6-7. Compassionate release or reduction of Ferrell's sentence by the Court would not reflect the seriousness of the offense or her violent criminal history, promote respect for the law, serve as a deterrent, or provide just punishment for her crimes.

³ In its brief, the Government does not address whether Ferrell is a danger to the community under 18 U.S.C. § 3142(g) or the § 3553(a), relying solely on Ferrell's failure to satisfy the requirements of U.S.S.G. § 1B1.13. Gov't Resp. 8, ECF No. 170. The Court will not address dangerousness either, but it will address the § 3553(a) factors.

Finally, the Court has considered the remaining factors in § 3553(a) and, to the extent they are applicable, finds that none of them provide sufficient weight to justify Ferrell's release. Thus, as an additional and alternative ground for denial of Ferrell's motion for compassionate release, the Court finds that even if she established extraordinary and compelling reasons, release is not warranted after consideration of the § 3553(a) factors.

CONCLUSION

For the foregoing reasons, it is recommended that Ferrell's motion for compassionate release (ECF No. 164) be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 12th day of April, 2023.

/s/ Stephen Hyles

UNITED STATES MAGISTRATE JUDGE